IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Bail Appl..No. 4649 of 2007()

CP.66/2007 of J.M.F.C.,TALIPARAMBA IN CRIME NO.2/2005 OF ALAKODE EXCISE RANGE OFFICE, KANNUR DISTRICT.

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PETITIONER/ACCUSED

MANGATTU SUSHEELA, W/O LAKSHMANAN,
AGED 32 YEARS, MANGATTU HOUSE,
MAVUMTHATTU, ALAKODE AMSOM, ARANGAM DESOM,
TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADV. SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI

RESPONDENTS: COMPLAINANT

THE EXCISE INSPECTOR,
ALAKODE EXCISE RANGE OFFICE,
KANNUR DIST.(CRIME NO.2/2005 OF ALAKODE
EXCISE RANGE OFFICE, KANNUR DISTRICT)REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4649 of 2007

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Dated this the 1st day of August, 2007

ORDER

Application for anticipatory bail. The petitioner, a woman was allegedly found in possession of 12 litres of wash on 21.02.05. The alleged recovery was from the personal possession of the petitioner. The seizure mahazar and occurrence report show the name of the petitioner as the accused. As there was no woman officials in the detecting party the petitioner could not be arrested. Investigation is complete. Final report has already been filed. The petitioner has not been arrested. The petitioner apprehends imminent arrest. After cognizance was taken, the learned Magistrate has issued coercive processes against the petitioner. It is prayed that anticipatory bail may be granted to the petitioner. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C, prays the learned counsel for the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons

must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. In the facts and circumstances of the case, I find absolutely no features which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the learned Magistrate or the Investigating Officer and seek regular bail in the normal and ordinary course.

4. This application is, in these circumstances, dismissed. I may hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons. Needless to say, the learned Magistrate has to take into account all the circumstances including the fact that the petitioner is a woman, that the investigation is already complete and that petitioner though available for arrest had not been arrested earlier.

(R.BASANT, JUDGE)

sj /true copy/-

P.A.to Judge